

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5457 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No
4. Whether this case involves a substantial question No :
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? No :

GSRTC

Versus

MANJI MEGHAJI VAGHARI, THRO' MEGHJI ARJAN VAGHARI

Appearance:

MR HEMANT S SHAH for Petitioner
MR SANDEEP N BHATT for Respondent No. 1
RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 13/03/2000

ORAL JUDGEMENT

1. In view of this Court's order dated 13.1.2000
this Appeal is being taken up for final disposal at the

admission stage with consent of the learned Counsel for the Appellant and Shri Sandeep N. Bhatt for the respondent No.1. The respondent No.2 is served, but none appears on his behalf.

2. The Award of the Motor Accident Claim Tribunal, Bhuj (Kutch) dated 21.7.1999 is partly under challenge in this Appeal only with regard to the award of interest at the rate of 15 % p.a. Shri Shah and Shri Bhatt have been heard on this limited point of controversy involved in this Appeal. Shri Bhatt has justified the Award of interest at the rate of 15 % p.a. on his own submissions and on the strength of certain decisions cited by him. On the other hand Shri Shah has tried to justify his arguments on the basis of two decisions of this Court and the decision of the Supreme Court. It is therefore desirable to examine these judgments and find out what is the correct position of law for award of interest in Motor Accident claim Cases.

3. After examining the Judgments cited by the two sides I find that the view taken by various Division Benches of this Court is conflicting on the point. The Apex Court's judgment cited by the two sides are under Consumer Protection Act and not under the Motor Vehicle Act.

4. The first Division Bench pronouncement of this Court in First Appeal No.1109 of 1998 G.S.R.T.C. v/s. Mangiben Prataprai Nayak and others, decided on 15.10.1998 lays down as under :

"Normally the rate of interest on a fixed deposit in a Scheduled Bank does not exceed 12 %. Having regard to the facts and circumstances of the case, we are of the view that the Tribunal was not justified in directing the appellant to pay the amount of compensation with 15 % interest from the date of filing of the claim petition till realisation and, therefore, that part of the award deserves to be modified."

From this decision of the Division Bench of this Court it appears that the Court was impressed with the fact that since the Scheduled Banks do not grant interest on Fixed Deposit exceeding 12 % p.a. hence the Motor Accident Claim Tribunal also should not have granted interest at the rate of 15 % p.a.

5. Next Division Bench pronouncement in First Appeal

No. 2535/99 - G.S.R.T.C. v/s. Heenaben wd/o Harishkumar Bipinchandra Dave, decided on 24.8.1999 also reiterates the same view by observing that "we are of the opinion that the Tribunal should have directed the appellant to pay the amount of compensation with interest at the rate of 12 % per annum and not with interest at the rate of 15 % per annum." These two cases were under the Motor Vehicles Act.

6. The third Division Bench pronouncement of this case in First Appeal Nos. 2632 to 2637 of 1999, decided on 2.12.1999, takes different view though not all together different view. The Division Bench in this case proceeded to observe as under :

"Following the said decision we are of the opinion that, looking to the facts of the present appeals, that the accident occurred in July 1994 and the claim petitions were filed in the same year, interest at 15 % per annum on the amount of compensation awarded from the date of the claim upto 30th June, 1997 would be reasonable, and interest at 12 % per annum on the awarded amount for the subsequent period upto realisation would be applicable. It is so held and directed."

It does not appear from this decision that the earlier two Division Bench decisions have been held to be not laying down correct law on Award of interest. Even from this decision it appears that the award of 12 % p.a. interest for certain period was thought reasonable and to this extent this Division Bench is partly on line with the earlier two Division Bench decisions of this Court.

7. The next Division Bench pronouncement of this Court in Oriental Fire & General Insurance Co. Ltd. v/s. Amarsing Pratapsing Sikliker reported in 34(1) G.L.R. 270, lays down all together different law. It lays down that the rate of interest is required to be revised upwardly and enhanced even in absence of cross objection or Appeal at the instance of the claimant while exercising the powers of this Court under Order : 41, Rule : 33 of the Code of Civil Procedure. According to the view of this Division Bench the Appellate Court can grant higher rate of interest from the date of application till payment if the circumstances so justify.

8. So far as two decisions of the Apex Courts are concerned the first decision is United India Insurance Co. Ltd. v/s. M.K.J. Corporation, reported in III (1996) CPJ 8 (SC). This case arose under Consumers

Protection Act and it was not a case under the Motor Vehicles Act. Consequently the law laid down by the Apex Court for granting interest in Motor Accident Claim Petition can not be strictly applied. So is the case with Sovintorg (India) Ltd. v/s. State Bank of India, New Delhi, reported in AIR 1999 SC 2963. This was also a case under the Consumers Protection Act.

9. The controversy can be cut-short and it is not desirable to refer these conflicting views to a Larger Bench for laying down correct law on the subject. This exercise can safely be avoided by taking aid from decision of this Court in First Appeal No.5458 of 1999, decided on 1.12.1999. This decision was rendered in a cognate First Appeal arising out of the same accident. Two claim petitions were filed. Above Appeal was decided on the Appeal filed and arising out of one of the claim petitions. In its Judgment this Court without reference to the above controversy and relying upon decision of the Apex Court arising under the Consumers Protection Act, directed that the Award of interest made by the Tribunal at the rate of 15 % p.a. be reduced to 12 % p.a. Since this First Appeal arose out of the same accident so also the present Appeal, different formula cannot be adopted in this Appeal for award of interest. That would amount to taking dual stand in so far as Award of interest is concerned. Since in cognate matter this Court awarded interest at the rate of 12% p.a. from the date of accident till realisation the argument advanced by Shri Shah is accepted whereas it is difficult to accept the arguments advanced by Shri Sandeep Bhatt.

10. In view of above discussion the Appeal succeeds in part only. The impugned award is modified to this extent only that the award of interest at the rate of 15 % p.a. shall stand reduced to 12 % p.a. from the date of accident till the date of realisation. No order as to costs. The amount deposited shall be paid to the claimant in the light of directions given by the Tribunal in its award keeping in view the modified rate of interest granted in this Appeal.

sd/-

Date : March 13, 2000 (D. C. Srivastava, J.)

sas